

**REMARKS:**

**Final Rejection Premature**

According to MPEP 706.07, “Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97 (c) with the fee set forth in 37 CFR 1.17(p).” Since a new ground of rejection was applied against claims 1-2 and 8-10, which rejection was not necessitated by applicant’s amendment of the claims, nor based on information submitted on an IDS filed during the period and with the fee set forth in the rules, the final rejection is premature. In line with the procedure discussed in MPEP 706.07(c) and MPEP 706.07(d), applicant hereby requests that the examiner reconsider and withdraw the finality of the last Office action.

**Claim Rejections - 35 USC § 102**

In the Office Action dated March 26, 2004, claims 1, 2, and 8 were rejected under 35 U.S.C. 102(b) as being anticipated by Doran.

This rejection is respectfully traversed because Doran does not meet all of the limitations of claim 1. Claim 1 requires that the first and second interior surfaces of the insulating panels comprise a series of male extensions protruding therefrom collectively to thereby form a void between the interior surfaces “such that a plurality of spaced apart posts, a plurality of spaced apart beams disposed to intersect said posts, and a plurality of webs spanning and joining adjacent

said posts and adjacent said beams are formed when said void is filled with poured concrete and the concrete cures” (emphasis added). In order for webs to be formed spanning between the posts and columns, as required by the claim, the male extensions protruding from the interior surfaces of the insulating panels must extend toward each other, but not contact each other, thereby leaving a gap between the extensions, in which gap the web is formed. In Doran, because all of the male extensions (120) on the first insulating panel (104) contact the opposite male extensions (120) on the second insulating panel (106) (see Figs. 11 and 120, between each of the concrete posts and beams of formed when the void in the form is filled, there would be holes, not webs of concrete, as required by the claim. The type of wall system having holes in the concrete of the finished wall which are filled in by the form itself is known in the art as a Screen Grid system (see the description of different known wall systems on page 11 of the last amendment), and that is a different type of wall system from the novel wall system set forth in claim 1 of the present application. In view of the failure of the Doran reference to meet all the limitations of the claims, reconsideration and withdrawal of the rejection of claims 1,2, and 8 as being anticipated by Doran is respectfully requested.

### **Claim Rejections - 35 USC § 103**

Claims 7, 9, and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over Doran. This rejection is respectfully traversed for the same reasons given above regarding the rejection of claim 1, since these claims depend from claim 1. The rejection is further objected to because Doran does not contain the structure required in the second and third paragraphs of claim 7, specifically that “each said tie bracket being a unitary structure having flat plates on either end,

connecting and spacing apart said first insulating panel and said second insulating panel and spanning a space therebetween, and said flat plates being embedded in and extending the full height of said first and second insulating panels”. The rejection of claim 7 remains silent as to these claimed features. Elements (126) which the examiner states he is considering to be a tie bracket is not disclosed or shown by Doran to comprise a unitary structure having flat plates on either end which are embedded respectively into the first and second panels and extend the full height of the panels, as required by the claim. On the contrary, elements (126) of Doran do not even have flat plates on either end, nor are they a unitary member that connects and spaces apart the insulating panels, nor do they extend the full height of the insulating panels. For the reasons given, reconsideration and withdrawal of the rejection of claims 7, 9, and 10 as unpatentable over Doran under 35 U.S.C. 103(a) is requested.

Claims 11-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Doran in view of Moore, Jr. These claims depend from claim 1, so this rejection is traversed for the same reasons given above regarding the rejection of claim 1.

### **Claim Objections**

Claims 4-6 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 4-6 depend from claim 2, which is believed to be allowable for the reasons given in the remarks above. Therefore, it is believed that claims 4-6 are also allowable.

### Allowed Claims

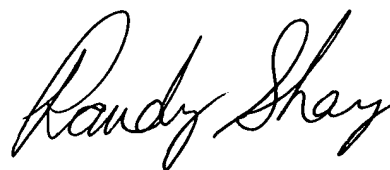
Claims 13-17 have been allowed.

### CONCLUSION

For the foregoing reasons, all the claims now pending in the present application are believed to be allowable, and the present application is believed to be in condition for allowance. Accordingly, favorable reconsideration of the application in light of the remarks is respectfully requested.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned representative at the number listed below. If a personal interview would further the prosecution of this application, the Examiner is requested to contact Applicant's representative at the number below to arrange a time to meet.

Respectfully submitted,

A handwritten signature in black ink that reads "Randy Shay". The signature is written in a cursive, flowing style.

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